

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2008-0038
)	for
NYK Logistics (Americas), Inc.)	Administrative Civil Liability
3285 De Forest Street)	
Mira Loma, CA 91752)	
)	
<u>Attention: Mr. Cameron Smith</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on February 29, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2007-0088, dated December 17, 2007, and on the recommendation for the imposition of administrative civil liability pursuant to California Water Code Sections 13385 and 13399.33 in the amount of \$6,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). NYK Logistics (Americas), Inc. (NYK), located at 3285 De Forest Street, Mira Loma, is authorized to discharge storm water under the Permit, WDID 8 33I015053.
2. The Permit requires submittal of an annual report by July 1 of each year. NYK did not submit the annual report by July 2, 2007 (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Non-Compliance (NNCs) to NYK. The first NNC was mailed to NYK, by certified mail, on August 7, 2007. When Board staff received no response to the first NNC, a second NNC was issued on September 10, 2007, again by certified mail. Additionally, staff spoke to Mr. Butch Doser on September 10, 2007 to remind him that the annual report was overdue and that the facility would be receiving a second NNC.
3. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007.

4. In addition, Board staff spoke to Mr. Butch Doser on October 3, 2007 reminding him that the annual report must be submitted by October 10, 2007, or a penalty would be assessed. Mr. Doser indicated that the report would be sent as soon as possible.
5. The facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.
6. On December 17, 2007, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2007-0088 to NYK proposing that the Board impose civil liability in the amount of \$6,000 on NYK for its failure to submit the annual report by the due date.
7. After receiving the ACL, Mr. Cameron Smith and Ms. Veronica communicated with Board staff and indicated that the annual report would be submitted soon. The report has not been received.
8. Water Code Section 13399.33(c) requires the Board to assess a mandatory penalty of one thousand dollars (\$1,000) for failure to submit the annual report. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed \$10,000 per day of violation. The total maximum liability for failure to submit the annual report is \$1,360,000.
9. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. A review of NYK's permit compliance history reveals that the facility has been chronically late in submitting its annual reports except for the timely submittal of the 1998-99 and 2001-02 annual reports. An ACL (R8-2005-0026) for \$1,000 was issued to NYK in 2005 for non-submittal of the 2003-04 annual report. NYK paid the assessment at that time. These and other factors were considered by the Assistant Executive Officer in establishing the amount of civil liability.
10. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13385 and 13399.33, administrative civil liability shall be imposed on NYK, in the amount of \$6,000, as proposed in Complaint No. R8-2007-0088 for the violations cited, payable as set forth below.

1. NYK shall pay \$6,000 to the State Water Resources Control Board by March 31, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, NYK may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on February 29, 2008.



Gerard J. Thibeault
Executive Officer